

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 273 of 1985

Date of decision: 15-10-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BB PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AM Raval for Petitioner

Ms. Siddhi Talati for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/10/97

ORAL JUDGEMENT

The petitioner, a Sales Tax Officer Class II of the Sales Tax Department of the Government of Gujarat has filed this special civil application and prayer has been made that he should be given deemed date of promotion to the post of Sales Tax Officer Class II as on 1-2-1978 with consequential benefits of drawing pay and allowances in arrears, which may be admissible to him in accordance with the general orders on the subject.

2. The petitioner admittedly belongs to Scheduled Tribe. He entered in the service of the Department as Clerk on 2-6-1960. He came to be promoted on the post of Sales Tax Inspector on 26-10-1967. For promotion to the post of Sales Tax Officer Class II the petitioner was required to pass departmental examination. There is no dispute between the parties that he passed the examination in the month of June, 1977. The parties are also not at variance that the petitioner was given promotion to the post of Sales Tax Officer Class II in the year 1980. The counsel for the petitioner contended that in the year 1978 thought the posts reserved for S.T. candidates were available, still his candidature was not considered. Again in the year 1979 his case for promotion was not considered. The counsel for the petitioner contended that in the year 1978 persons junior to him have been given promotion.

3. Learned counsel for the respondents does not dispute that in the year 1978 and 1979 promotions were made to the post of Sales Tax Officer Class II. It is also not in dispute that the petitioner was eligible for consideration for promotion to the post of Sales Tax Officer Class II in the year 1978 and 1979. In view of this fact the claim of the petitioner for consideration of his candidature for promotion to the post of Sales Tax Officer Class II with reference to the year 1978 and 1979 cannot be said to be without any substance or merits. However, claim of the petitioner with reference to the promotion made in the year 1977 has no merits. Eligibility of the candidate for promotion to the post of Sales Tax Officer Class II has to be determined on a particular date. As the petitioner has passed the examination in June 1977 if he was not taken to be eligible on the said date for promotion, no fault can be found with the aforesaid action of the respondents. But non-consideration of the candidature of the petitioner for promotion in the years 1978 and 1979 certainly cannot be said to be legal and justified.

4. In the result this special civil application is disposed of in terms that the case of the petitioner for promotion to the post of Sales Tax officer Class II against the reserved quota of Scheduled Tribe shall be considered by the Departmental Promotion Committee or the Departmental Selection Committee with reference to the year 1978 and in case he is not found suitable in the year 1978 then with reference to the year 1979. In case the petitioner is found suitable for promotion to the post of Sales Tax Officer Class II from the year 1978 or 1979, then the question whether he should be granted actual benefits of promotion or not as well as whether the period of promotion should be taken to be requisite experience for eligibility for promotion to the next higher post has to be considered by the competent authority and appropriate order has to be passed. All this exercise shall be undertaken and completed within a period of seven months from the date of receipt of copy of this order. Rule and Special Civil Application stands disposed of in the aforesaid terms. No order as to costs.

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